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Meta Platforms, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDREW U.D. STRAW,

Plaintiff,

v.

FACEBOOK,

Defendant.

Case No. 24-cv-8625-PHK

**DEFENDANT META PLATFORMS,
INC.'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF ITS MOTION
TO DISMISS PLAINTIFF'S COMPLAINT
WITH PREJUDICE**

Date: March 28, 2025
Time: 1:00 pm
Courtroom: F, 15th Floor
Judge: Hon. Peter H. Kang

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE Defendant Meta Platforms, Inc. (“Meta”)¹ requests that this Court take judicial notice, pursuant to Federal Rule of Evidence 201, of the Meta’s Terms of Service. Meta makes this request in support of its Motion to Dismiss Plaintiff’s Complaint With Prejudice, filed concurrently herewith. True and correct copies of the documents for which judicial notice is requested are attached to the Declaration of Michael Duffey, also filed concurrently herewith.

I. INTRODUCTION

Meta respectfully requests that this Court take judicial notice of the Meta’s Terms of Service in force at the time of the alleged suspension of Plaintiff’s Facebook Page. Declaration of Michael Duffey (“Duffey Decl.”), Ex. A. Meta also respectfully requests that this Court take judicial notice of the same Terms of Service, preserved by the Internet Archive’s WayBack Machine as of December 8, 2024 as it was published by Meta. Duffey Decl., Ex. B. True and correct copies of these documents are attached to the Declaration of Michael Duffey.

II. LEGAL STANDARD

On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court “must consider the complaint in its entirety, as well as ... documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Courts may take judicial notice of facts that are “not subject to reasonable dispute.” Fed. R. Evid. 201(b). Facts are not subject to reasonable dispute that (1) are “generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *Id.* Courts “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

A. Judicial Notice of Websites

Publicly accessible websites are “[p]roper subjects of judicial notice when ruling on a

¹ Plaintiff erroneously sued “Facebook.” Meta was formerly known as Facebook, Inc. It changed its name to Meta on October 28, 2021. For ease of reference, Meta refers to itself as Meta herein.

1 motion to dismiss.” *Perkins v. LinkedIn Corp.*, 53 F. Supp. 3d 1190, 1204 (N.D. Cal. 2014) (taking
 2 judicial notice of web pages). Courts routinely take judicial notice of publicly available terms of
 3 service. *See, e.g., In re Facebook, Inc. Sec. Litig.*, 477 F. Supp. 3d 980, 1009 (N.D. Cal. 2020)
 4 (taking judicial notice of Meta’s privacy policy); *In re Google Assistant Priv. Litig.*, 457 F. Supp.
 5 3d 797, 813–14 (N.D. Cal. 2020) (taking judicial notice of Google’s Terms of Service, Privacy
 6 Policy, and a Google blog post); *Matera v. Google, Inc.*, 2016 WL 5339806, at *7 (N.D. Cal. Sept.
 7 23, 2016) (taking judicial notice of Google’s Terms of Service, “archived versions” of Google’s
 8 privacy policy, and a Google web page entitled “Updates: Privacy Policy”). Courts may also take
 9 judicial notice of websites that have been preserved by the Internet Archive’s WayBack Machine.
 10 *See Yoon v. Meta Platforms, Inc.*, No. 24-CV-02612-NC, 2024 WL 5264041, at *3 (N.D. Cal. Dec.
 11 30, 2024) (“Courts routinely take judicial notice of terms of service and other policies, including
 12 content from Internet Archive’s Wayback Machine.”); *Brown v. Google LLC*, 525 F. Supp. 3d
 13 1049, 1061 (N.D. Cal. 2021) (“Courts have taken judicial notice of the contents of web pages
 14 available through the Wayback Machine as facts that can be accurately and readily determined from
 15 sources whose accuracy cannot reasonably be questioned.”).

16 **B. Incorporation by Reference**

17 Documents incorporated by reference into a complaint—*i.e.*, “documents whose contents
 18 are alleged in a complaint and whose authenticity no party questions, but which are not physically
 19 attached to the [complaint]”—may also be considered in connection with a Rule 12(b)(6) motion.
 20 *Tunac v. United States*, 897 F.3d 1197, 1207 n.8 (9th Cir. 2018) (quoting *Branch v. Tunnell*, 14
 21 F.3d 449, 454 (9th Cir. 1994)). Such a document may be treated “as though [it is] part of the
 22 complaint itself,” and the court may generally “assume [its] contents are true for purposes of a
 23 motion to dismiss under Rule 12(b)(6).” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003
 24 (9th Cir. 2018) (quotations and citations omitted).

25 This doctrine applies where “plaintiff’s claim depends on the contents of a document, the
 26 defendant attaches the document to its motion to dismiss, and the parties do not dispute the
 27 authenticity of the document, even though the plaintiff does not explicitly allege the contents of
 28 that document in the complaint.” *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). This rule

1 “prevent[s] plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting ... documents
2 upon which their claims are based.” *Id.*

3 **III. ARGUMENT**

4 The Court may consider the Terms of Service because it is both the proper subject of judicial
5 notice and has been incorporated by reference into the Complaint. *First*, the Terms of Service, as
6 preserved by the Internet Archive’s WayBack Machine as the Terms existed on December 8, 2024
7 (*see* Duffey Decl., Ex. B), is the proper subject of judicial notice. The content of this publicly
8 available website is “not subject to reasonable dispute” and “can be accurately and readily
9 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. Rule
10 201(b) & (b)(2). Indeed, “[c]ourts routinely take judicial notice of terms of service and other
11 policies, including content from Internet Archive’s Wayback Machine.” *Yoon v. Meta Platforms,*
12 *Inc.*, 2024 WL 5264041, at *3; *see also Matera v. Google, Inc.*, 2016 WL 5339806, at *7 (taking
13 judicial notice of “archived versions” of Google’s privacy policy). Therefore, the Terms of Service,
14 preserved by the Internet Archive’s Wayback Machine as the Terms existed on December 8, 2024,
15 is subject to judicial notice.

16 *Second*, the Terms of Service is also incorporated by reference because it was in effect at
17 the time of the alleged suspension of Plaintiff’s Facebook Page, and Plaintiff’s claim regarding the
18 purported suspension of his Facebook Page necessarily depends on the contents of the Facebook
19 Terms of Service. *See Knievel*, 393 F.3d at 1076 (incorporation by reference is appropriate where
20 “plaintiff’s claim depends on the contents of a document, the defendant attaches the document to
21 its motion to dismiss, and the parties do not dispute the authenticity of the document”). To
22 adequately plead a tortious interference with business relations claim, Plaintiff must allege that
23 Meta committed an independently wrongful act. Thus, his claim hinges on whether Meta’s
24 suspension of his account and law firm business page was wrongful under the applicable Terms of
25 Service. As discussed in Meta’s Motion to Dismiss, the Terms of Service in effect at the time of
26 the purported suspension expressly permitted the company to suspend Plaintiff’s account and
27 business page. Because the purported suspension was authorized by the Terms of Service, it cannot
28 constitute an independently wrongful act, and Plaintiff’s tortious interference with business

1 relations claim necessarily fails. As such, it is appropriate for the Court to take judicial notice of
2 the Terms of Service.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Meta respectfully requests that the Court take judicial notice of
5 the Terms of Service as attached to the Duffey Declaration as Exhibits A and B, filed concurrently
6 herewith.

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9 Dated: February 12, 2025

ORRICK, HERRINGTON & SUTCLIFFE LLP

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11 By: /s/ Jacob M. Heath
12 JACOB M. HEATH
13 Attorney for Defendant
14 Meta Platforms, Inc.
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